

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

UNITED STATES ex rel. HENRY
DAHLMAN,

Civil No. 02-590 (JRT/JSM)

Plaintiff,

v.

ORDER

EMERGENCY PHYSICIANS
PROFESSIONAL ASSOCIATION,

Defendant.

Marcy Wallace, COX, GOUDY, McNULTY & WALLACE, 676A Butler Square, Minneapolis, MN 55403, for Relator.

D. Gerald Wilhelm, Assistant United States Attorneys, OFFICE OF THE UNITED STATES ATTORNEY, 600 United States Courthouse, 300 South Fourth Street, Minneapolis, MN 55415.

In this action brought pursuant to the False Claims Act (“FCA”)¹ the relator voluntarily dismissed the complaint with the consent of the government. The government now requests that the complaint, the government’s notice of election to decline intervention, and all filings occurring after the date of the notice of intention to decline intervention be unsealed. The relator objects, arguing that the FCA does not authorize the Court to unseal the complaint, and that unsealing the complaint poses a

¹ 31 U.S.C. §§ 3729 *et. seq.*

FILED _____
RICHARD D. SLETTEN, CLERK
JUDGMENT ENTD. _____
DEPUTY CLERK _____

significant risk of harm to his interests. For the reasons discussed below, the Court grants the government's motion, and respectfully directs the Clerk of Court to unseal the file in its entirety. The Court will stay this Order for 30 days to allow objection to the unsealing of documents.

ANALYSIS

The False Claims Amendments Act of 1986 included a *qui tam* (meaning “who as well,” *i.e.*, one who sues as well for the state as himself) provision to encourage “whistleblowers.” 31 U.S.C. § 3730. In a *qui tam* action, a plaintiff may bring a private civil action on behalf of himself and on behalf of the United States government against a defendant who, in violation of 31 U.S.C. § 3729, has submitted false claims to the United States for payment. The government may choose to intervene in the action, 31 U.S.C. § 3730(b)(4)(A), or it may decline to join the action, leaving the *qui tam* plaintiff as the plaintiff. 31 U.S.C. § 3730(b)(4)(B). *See generally U.S. ex rel. Farrell v. SKF USA, Inc.*, 1998 WL 265242 *2 (W.D.N.Y. May 18, 1998).

Title 31 U.S.C. § 3730(B)(2) provides that a private party bringing suit on behalf of the government must file the complaint *in camera* and that the file is to be kept under seal for at least 60 days. The court may grant extensions of that time, at the request of the government, for good cause shown. 31 U.S.C. § 3730(b)(3). The government must elect, before the file is unsealed, whether to intervene or to inform the court of its decision not to do so. 31 U.S.C. § 3730(b)(4). In this case, after the United States declined to intervene, the relator voluntarily dismissed the complaint.

Although the FCA requires complaints to be filed under seal, the FCA does not expressly speak to the particular issue before the Court. Specifically, the FCA does not dictate that complaints must be unsealed if the action is voluntarily dismissed, nor does the FCA require (or authorize) that the complaint remain under seal indefinitely. Similarly, the Court could not find discussion of this particular situation in case law from any district. The Court has reviewed the complaint *in camera* and finds the statutory language, legislative history, and the public interest in open and accessible court filings all support unsealing the complaint in this matter.

The relator suggests that because the FCA does not require the Court to unseal complaints in this situation, the Court is without authority to do so. The Court rejects this argument. Legislative history suggests that the purpose of sealing the complaint for 60 days is to protect the interests of the government and allow the government time to investigate the relator's claims. Nothing in the FCA indicates that the Court must, or should, keep complaints under seal even after the dismissal of the complaint.

The Court is further persuaded by the long-standing public policy in open access to complaints and other matters on file with the Court. *See, e.g., Nixon v. Warner Communications*, 435 U.S. 589, 597 (1978) ("It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents." (citations omitted)).

Finally, the Court cannot maintain the complaint under seal based on the relator's suggestion that he faces retaliation from the named defendant if the complaint is

unsealed. The Court is aware that the relator is involved in separate litigation in state court with the named defendant. The Court is also aware, however, that the relator is no longer employed by the named defendant, therefore he does not risk adverse employment action, such as termination or demotion. The relator has not informed the Court how the allegations in the complaint could impact the state court litigation, and the Court's review of the complaint does not indicate that the relator would face any obvious or extreme prejudice by the unsealing of the complaint.

The Court is aware that in some instances, certain filings are maintained under seal, even after the complaint is unsealed.² In some circumstances, particular filings might contain sensitive information and lifting the seal on such documents could reveal information regarding pending investigations. The Court has reviewed the entire file in this matter and does not find that any document contains such sensitive information. Therefore the Court will order the entire file unsealed. However, the Court will stay the Order for 30 days, to allow either party to object to the unsealing of a particular docket entry.

² It appears that the "regular" practice in this district is for the complaint to be unsealed, along with the government's notice of election to decline intervention. All filings occurring after the government declines to intervene are also typically unsealed.

ORDER

Based upon the foregoing, the submissions of the parties, the arguments of counsel and the entire file and proceedings herein, **IT IS HEREBY ORDERED** that:

1. The Government's letter request to unseal the complaint [Docket No. 11] is **GRANTED**;

2. Unless the Court directs otherwise, the file shall be **UNSEALED** in its entirety thirty (30) days from the date of this Order.

DATED: January 5, 2004
at Minneapolis, Minnesota.

s/ John R. Tunheim
JOHN R. TUNHEIM
United States District Judge